

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 99 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos.1 & 3 to 5 No. No.2 Yes.

ROHITKUMAR CHHORUBHAI DESAI

Versus

STATE OF GUJ.

Appearance:

MR DD VYAS for Petitioner
GOVERNMENT PLEADER for Respondent No. 1
NOTICE SERVED for Respondent No. 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 21 /04/98

ORAL JUDGEMENT

This is plaintiff's Second Appeal.

Brief facts are that the plaintiff-appellant filed a suit for declaration that he is owner of the disputed land admeasuring 4 acres 15 gunthas bearing survey no.184, block no.209 situated in village Kanbhi, district Valsad. According to the appellant he along with the defendants no. 3, 4 and 5 are owners in

possession of the disputed land. The suit for injunction was filed against defendant no.1 that he has no right to interfere with the possession of the appellant and the defendants 3, 4 and 5 over the disputed land. It was alleged that the suit land was recorded in the name of the plaintiff and his forefathers since 1921 and they were in possession of the same without any obstruction. Shortly before the institution of the suit the defendant no.1 viz. Mamlatdar declared that the suit land is owned by the temple of Goddess Bhavani and the said temple is holder of the suit land as Inamdar by order dated 27.4.1977 and directed the plaintiff to hand over possession of the suit land to the Sarpanch of the village. This order was challenged being illegal, unjust and in violation of the principles of natural justice. On these allegations the suit for declaration and permanent injunction was filed.

The suit was contested by the defendant nos. 1 and 2 on the ground that the land in suit is Devsthan Inam Land and is owned and possessed by Bhavani Mata Temple. It was also denied that the plaintiff and his forefathers were paying revenue assessment or were in possession of the suit land since 1921. Ownership of the plaintiff over the land along with the defendants no. 3 to 5 was also denied. It was also pleaded that the suit is barred under the provisions of the Gujarat Devsthan Inam Abolition Act, 1969.

The Trial Court on the preliminary issue held that he had no jurisdiction to hear and decide the suit. Accordingly the suit was dismissed.

Five substantial questions of law were posed in the memo of Second Appeal. However, since the suit was dismissed on the ground of bar of jurisdiction of the Civil Suit only substantial questions 1 and 2 arise for determination in this Second Appeal. Question of adverse possession estoppel and ownership by adverse possession cannot be determined because these questions were not decided by the two Courts below.

The judgment of the Trial Court is very sketchy and reasons for dismissal of the suit are given just in one para.

The judgment of the First Appellate Court however shows that the suit was found barred by section 20 of Gujarat Devsthan Inamdar Abolition Act, 1969 (for short 'Act').

As stated earlier the suit was for two reliefs. One for declaration of rights of the plaintiff and defendants no. 3 to 5 as owner in possession of the disputed land and the second was permanent injunction restraining the defendants no. 1 and 2 from interfering with their possession over the suit land. The stand of the defendants no. 1 and 2 was that the land in suit was devsthan inami land and the suit in respect of such land is barred under the Act of 1969. In this connection, only two sections viz. sections 4 and 20 of the Act are relevant.

Section 4 provides that if any question arise whether any village, portion of a village or land, is held under a Devsthan inam, the State Government shall after giving an opportunity to the parties to be heard and holding a formal inquiry decide the question. By the State Government it is meant that the authorised officer of the State Government shall decide such question which is clear from proviso to section 4(1)(c) of the Act, which provides that the State Government may authorise any officer (hereinafter in this section referred to as authorised officer) to decide in the like manner question arising under clauses (a) , (b) or (c).

The question involved in this case on the strength of the pleading of the parties is whether the land in suit is plaintiff's land along with defendants no. 3 to 5 or it is land held under Devsthan inam. Such question is covered under section 4(1)(a) of the Act.

Sub-section (2) and section (4) further provides that any person aggrieved by the decision of the authorised officer under the proviso to sub-section (1) may file an appeal to the State Government within 60 days from the date of such decision.

Sub-section (3) provides for where from a decision of the authorised officer no appeal is filed under sub-section (2), the State Government may, after the expiry of the period for filing an appeal mentioned in sub-section (2) but not later than one year from the date of the decision, call for the record of the proceedings of the authorised officer for the purpose of satisfying itself to the legality, propriety or regularity of such proceeding or decision and may pass such order thereon as it thinks fit. Sub-section (4) of Section 4 provides that the decision of the authorised officer, subject to an appeal under sub-section (2) or revision under sub-section (3) and the decision of the State Government under sub-section (1) or sub-section (2)

or, as the case may be, under sub-section (3) shall be final and conclusive and shall not be questioned in any suit or proceeding in any Court.

It is further clear from the above provision that in the first place if the question involved is whether the land is held under Devsthan inam it shall be decided by the authorised officer having delegated authority from the State Government or by the State Government and the decision of the authorised officer is appealable within 60 days from the date of such decision. So far as the revisions are concerned, there is suo moto power conferred upon the State Government to exercise revisional power and that too in a case where no appeal has been filed against the order of the authorised officer and that too such revision can be entertained suo motu within the period but not later than one year from the date of the decision. It is further provided that the decision of the authorised officer is subject to appeal or revision and such decision shall be final and conclusive and shall not be questioned in any suit or proceedings in any Court. This section therefore bars jurisdiction of Civil Court to decide the question already decided by the authorised officer that the land in suit is held under Devsthan inam.

There is material on record that the appellant filed appeal against the order of the authorised officer and that appeal was dismissed. Waiting for a period of about six years he preferred to file the suit in Civil Court. Ofcourse the lower Appellate Court found that there was nothing on record to indicate that the revision was filed. However, there is also no evidence on record that the State Government exercised suo moto revisional power. If the appeal was decided by the State Government against the present appellant the decision of the State Government became final and conclusive. All the points viz. order of the authorised officer being in violation of the principles of natural justice or being illegal should have been raised in the Appeal before the State Government and not in separate suit. It cannot be heard in subsequent Civil Suit that the Mamlatdar did not afford an opportunity of hearing to the present Appellant. This was the question which should have been agitated in the Appeal before the State Government. Thus, in the first instance the suit was barred under section 4 of the Act.

Section 20 of the Act further bars jurisdiction of the Civil Court. It provides as under :

"20. Bar of jurisdiction - No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with, by the officer authorised under the proviso to sub-section (1) of section 4 or section 25 or the Collector, the Gujarat Revenue Tribunal in appeal, or the State Government in appeal or revision or in exercise of their powers of control".

From the above section, it is clear that the jurisdiction of the Civil Court is barred in the matters to settle the dispute or deal with any question which under the Act is required to be settled, decided or dealt with by the authorised officer under section 4(1) or section 25 or the Collector, Gujarat Revenue Tribunal in Appeal or the State Government in appeal or revision. If the appellant did not file any appeal before the Gujarat Revenue Tribunal he cannot be permitted to file subsequent Civil Suit in Civil Court. As discussed earlier, question involved in the suit was such which was to be decided by the authorised officer under this Act and since the authorised officer decided the question against the appellant and his appeal against the order of the authorised officer was dismissed by the State Government the said decision has attained finality and it cannot be questioned in subsequent Civil Suit. Thus, in view of section 20 of the Act also the suit was barred and could not be entertained by the Civil Court.

Learned Counsel for the appellant contended that in view of revenue entries in favour of the plaintiff and his forefathers since 1921 title by long possession and adverse possession in any case in alternative was acquired by the plaintiff and defendants no. 3 to 5. Hence question involving declaration of title of the plaintiff and defendants no. 3 to 5 could be decided by the Civil Court and the Civil Court alone is competent to grant injunction. I am unable to accept this contention for the obvious reasons that if the suit itself is barred under sections 4 and 20 of the Act other questions involved in the suit could not be heard and decided by the Trial Court or by the First Appellate Court. Moreover, since the suit was decided on preliminary issue the two Courts below had no occasion to give finding on question of adverse possession and title by long possession. Hence findings on these questions cannot be given in Second Appeal.

In view of the above discussion the two Courts

below committed no illegality in holding that the suit was not cognizable in Civil Court rather it was barred in view of sections 4 and 20 of the Act. Therefore, there is no merit in this Appeal which is hereby dismissed. In the circumstances of the case the parties shall bear their own costs.

Sd/-

(D.C.Srivastava,J)

m.m.bhatt